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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/765,914	01/18/2001	Galen Mark Gareis	6500-1583.2	8471
7590 12/02/2004				
ROBERT F. I. CONTE LEE, MANN, SMITH, MCWILLIAMS, SWEENEY & OHLSON P.O. BOX 2786 CHICAGO, IL 60690-2786			EXAMINER MAYO III, WILLIAM H	
			ART UNIT 2831	PAPER NUMBER

DATE MAILED: 12/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/765,914

Applicant(s)

GAREIS ET AL.

Examiner

William H. Mayo III

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 14, 16 and 17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14, 16 and 17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 8, 2004 has been entered.

### ***Specification***

2. The disclosure is objected to because of the following informalities: The specification is objected to because under the heading "Brief Description of the Drawings" and "Detailed Description", there is no mention of Figure 1A. The applicant should insert the proper description of Figure 1A under the Brief and Detailed Description.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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4. Claims 14 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 14 recites the limitation "each open area" in line 11, which is confusing and renders the claim indefinite. It is unclear what open area the applicant is referring to since the previous lines of the claim doesn't mention or detail the actual structure of the open area. If the applicant is referring to a new open area, then he/she should make the term more distinguishable by detailing the open area.

6. Claim 17 recites the limitation "each open area" in line 1, which is confusing and renders the claim indefinite. It is unclear what open area the applicant is referring to since the previous lines of the claim doesn't mention or detail the actual structure of the open area. If the applicant is referring to a new open area, then he/she should make the term more distinguishable by detailing the open area.

### ***Double Patenting***

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory

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double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 14 and 16-17 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,222,130. Although the conflicting claims are not identical, they are not patentably distinct from each other because US Patent 6,222,130 fully encompasses all of the claim limitations of the claimed invention.

### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of

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35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

11. Claims 14 and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arroyo et al (Pat Num 4,807,962, herein referred to as Arroyo) in view of Tessier et al (Pat Num. 5,132,488, herein referred to as Tessier) and Tash et al (Pat Num. 5,329,064). Arroyo et al discloses a high performance data cable (Figs 1-2 & 4-5, fiber optic cable) for use in buildings and offices (Figs 6 & 7) having a plurality of insulated conductors (79), a cable covering (50).

Specifically, with respect to claim 14, Arroyo et al discloses a data cable (20) comprising an interior support (22) being unshielded and having a longitudinally extending central portion (24) forming a portion of the support (22), a plurality of projections (26) extending from the central portion (24) wherein each of the projection (26) of the plurality of projections (26) being adjacent with at least two other projections (26) of the plurality of projections (26) forming a plurality of adjacent projections (26, Figs 2 & 5), a cable covering (50) contacting the projections (26, Fig 2), wherein the conductors (79) are disposed in an open region (28, Fig 2). With respect to claim 16, Arroyo discloses that the projections (26) are arms (Fig 2). With respect to claim 17, Arroyo discloses that the open area (28) is selected from a groove (28).

Arroyo et al doesn't necessarily disclose that the electrical conductors being twisted pairs wherein one of the twisted pair conductors is disposed in the open area (Claim 4).

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Tessier et al teaches a signal transmission cable (Figs 2-3) that maintains the distances between adjacent pairs, substantially thereby decreasing the induced voltages between the pairs so that the induced voltages are substantially equal which in return, minimizes the cross-talk between adjacent pairs comprising an interior support (i.e. spacer-Figs 2-3). Specifically, with respect to claim 14, Tessier teaches a cable (40) which has four twisted pairs (14) wherein each twisted pair is disposed within an individual recess (i.e. open area 48).

It would have been obvious to one having ordinary skill in the art of cables at the time the invention was made to modify the electrical conductors of Arroyo to comprise the twisted conductor pair configuration as taught by Tessier because Tessier et al teach that such a configuration maintains the distances between adjacent pairs, substantially thereby decreasing the induced voltages between the pairs so that the induced voltages are substantially equal which in return, minimizes the cross-talk between adjacent pairs (Col. 2, lines 51-66).

Arroyo also doesn't disclose the cable covering being a laterally folded shield (Claim 14).

Tash teaches a cable (Fig 2) for use as a telecommunication cable (Col. 1, lines 34-37), that comprising a cable covering (20) having a configuration that is well known in the art of cables for providing a fairly adequate shield protection at low, middle, and high frequencies (Col 1, lines 10-24). Specifically, with respect to claim 14, Tash teaches a cable (10) comprising a cable covering (20), wherein the cable covering (20) is laterally applied in the well-known configuration of a Z-Fold (Col 2, lines 21-24, Fig 3).

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It would have been obvious to one skilled in the art of cable at the time of the invention to modify the cable of Arroyo et al to comprise an cable covering having Z-Fold as taught by Tash because Tash teaches that such a configuration is well known in the art of cables for providing a fairly adequate shield protection at low, middle, and high frequencies (Col 1, lines 10-24) and since it has been held that a change in form cannot sustain patentability where involved is only extended application of obvious attributes from a prior art. *In re Span-Deck Inc. vs. Fab-Con Inc.* (CA 8, 1982) 215 USPQ 835.

### ***Response to Arguments***

12. Applicant's arguments filed November 8, 2004 with respect to claims 14 and 16-17 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. They are Kincaid (Pat Num 4,327,246) and Timmons (Pat Num 3,032,604), both of which disclose the Z-fold (i.e. longitudinally wrapped cable covering) of the cable covering.

### ***Communication***

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Mayo III whose telephone number

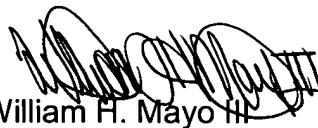


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is (571)-272-1978. The examiner can normally be reached on M-F 8:30am-6:00 pm (alternate Fridays off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dean Reichard can be reached on (571) 272-2800 ext 31. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
William H. Mayo III  
Primary Examiner  
Art Unit 2831

WHM III  
November 21, 2004